

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

INTENT PERFORMANCE LLC, *et al.*

PLAINTIFFS

v.

CIVIL ACTION NO. 2:23-cv-86-TBM-RPM

**INTENT SPORTS & FITNESS, LLC,
*et al.***

DEFENDANTS

ORDER

This matter comes before the Court on the Joint Partial Motion to Dismiss [15] filed by Lora Davis, Intent Performance LLC, Bailey Parkinson, and David Parkinson on July 31, 2023, in response to the Answer to Amended Complaint and Counterclaim [13] filed by Adam Bassett, Katie Beth Sumrall, Marcus Moore, Intent Sports & Fitness, LLC, and Briar Russell on July 24, 2023. Pursuant to the Amended Answer and Amended Counterclaim [20] filed by Marcus Moore, Intent Sports & Fitness, LLC, Katie Beth Sumrall, Adam Bassett, and Briar Russell on August 11, 2023, the Court finds that the Joint Partial Motion to Dismiss [15] is MOOT.

The Amended Counterclaim [20] renders the Counterclaim [13] of no legal effect because the Amended Counterclaim [20] does not refer to, adopt, or incorporate by reference the Counterclaim [13]. *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) (finding that an amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading). Moreover, to this date, there has been no response or reply to the Joint Partial Motion to Dismiss [15] by any of the parties.

Therefore, the pending Joint Partial Motion to Dismiss [15] is moot. *See New Orleans Association of Cemetery Tour Guides and Companies v. New Orleans Archdiocesan Cemeteries*, 56 F.4th 1026, 1034 (5th Cir. 2023) (“Because the first amended complaint is nullified, we cannot consider—and thus must dismiss—an appeal . . . stemming from said complaint.”).

IT IS THEREFORE ORDERED that the Joint Partial Motion to Dismiss [15] filed by Lora Davis, Intent Performance LLC, Bailey Parkinson, and David Parkinson is DENIED as MOOT.

THIS, the 23rd day of February, 2024.



TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE